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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of
Health and Human Services, *et al.*,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE, *et al.*,

Defendant-Intervenors

Case No.: 4:17-cv-5783-HSG

JOINT STATUS REPORT

On August 17, 2021 the Court stayed this case and ordered the parties to file status reports every three months. ECF No. 467. The parties report as follows:

1. This case concerns the validity of two rules which create a moral exemption, and

- 1 expand a religious exemption, to the rules establishing the contraceptive coverage
 2 requirement. *See* Religious Exemptions and Accommodations for Coverage of
 3 Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15,
 4 2018); Moral Exemptions and Accommodations for Coverage of Certain
 5 Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
- 6 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311, 366,
 7 368, 370, as well as supplemental briefs addressing the Supreme Court’s decision
 8 in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct.
 9 2367 (2020), *see* ECF Nos. 433, 435, 437, 438, 440.
- 10 3. On August 3, 2021, the parties filed a joint status report, in which Federal
 11 Defendants asked the Court to stay the case to permit the defendant agencies to
 12 evaluate the issues presented by this litigation, as well as their regulatory and
 13 policy options. ECF No. 462. The Court had once previously held the motions
 14 in abeyance. ECF No. 454. Plaintiffs and intervenor March for Life did not object
 15 to the request. Intervenor Little Sisters objected.
- 16 4. On August 16, 2021, Federal Defendants announced that “[t]he Departments [of
 17 Health and Human Services, Treasury, and Labor] intend to initiate rulemaking
 18 within 6 months to amend the 2018 final regulations and obtaining public input
 19 will be included as part of the Departments’ rulemaking process.” CMS.Gov,
 20 Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48)
 21 (Aug. 16, 2021) (available at [https://www.cms.gov/CCIIO/Resources/Fact-](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)
 22 [Sheets-and-FAQs#Affordable_Care_Act](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)).
- 23 5. On August 17, 2021, the Court held a case management conference. The Court
 24 granted Federal Defendants’ request to stay the case and directed “counsel . . . to
 25 e-file a joint status report every three months.” ECF No. 467.
- 26 6. The Court held another status conference on May 17, 2022.
- 27 7. On July 8, 2022, Federal Defendants submitted a draft proposed rule to the Office
 28

of Management and Budget (OMB) for review by its Office of Information and Regulatory Affairs (OIRA) pursuant to Executive Order 12866. See Coverage of Certain Preventive Services Under the Affordable Care Act (CMS-9903), <https://www.reginfo.gov/public/do/eoDetails?rrid=254114>.

8. The Federal Defendants report that they are continuing to work with OIRA to prepare the Notice of Proposed Rulemaking for publication as quickly as is possible consistent with ongoing resource limitations and prudent decision-making.
 9. Federal Defendants propose that the case remain stayed and that Federal Defendants continue to file status reports every 90 days to apprise the Court of the status of the rulemaking and their position on the need for a continued stay.
 10. Plaintiff States do not object to the Federal Defendants' proposal.
 11. Intervenor Little Sisters of the Poor maintains that this lawsuit should resume and be resolved against the Plaintiff States, for the reasons it has previously given the Court. The Little Sisters respectfully request a status conference to discuss resuming the case and setting an appropriate schedule.
- Furthermore, on September 2, 2022, counsel for Proposed Intervenor Little Sisters of the Poor, St. Mary's Home (the "Little Sisters Chicago"), filed a motion to intervene. Intervenor-Defendant Little Sisters of the Poor Jeanne Jugan Residence (the "San Pedro Home") expects to sell its home and cease operations within the next year. Therefore, the Little Sisters Chicago seek intervention to maintain a defense of the Final Rule and any religious exemption granted by the federal government, especially given the federal government's uncertain commitment to defending the current rule. In so doing, the Little Sisters Chicago fully adopts the positions and existing briefing and filings of the San Pedro Home.
- The motion to intervene is fully briefed and ripe for decision. A hearing date for the motion is set for January 19, 2023.

12. Intervenor March for Life does not oppose the Federal Defendants' proposal.

1 Dated: November 1, 2022

Respectfully submitted,

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